services as described in the application of registration cited against it, T.M.E.P. §1207.01, and his inquiry is whether the products are related so that the consuming public is likely to believe that one product emanates from or is sponsored by another. In re Hal Leonard Publishing Corp., 15 U.S.P.Q. 2d 1574, 1575 (T.T.A.B. 1990). Competition is not necessary, but if there is no competition, confusion is much less likely. Time, Inc. v. T.I.M.E., Inc., 102 U.S.P.Q. 275, 283 (S.D. Cal. 1954). There is no monopoly in a mark as applied to all goods or services. Anheuser-Bush, Inc. v. Major Mud & Chemical Co., Inc., 221 U.S.P.Q. 1191 (T.T.A.B. 1984). Therefore, the marks as applied to the specific goods and services at issue should be considered.

In the present case, Applicant's goods do not compete with the goods of the cited registration, so confusion is not likely. Applicant's use of the mark SULTAN is in connection with snowboards. In contrast, the registered mark SULTAN relates to athletic footwear, which are considerably different from snowboards. The Examining Attorney asserts that Applicant's goods are related to the goods of the registrant in that they are the types of goods that originate from the same source under the same mark, but does not cite any support for these assertions.

Snowboards are not sold in the same channels of trade as athletic shoes. The competitive distance between Applicant's goods and the goods of the cited registration is significant. Cf. MacGregor-Doniger, Inc. v. Drizzle, Inc., 599 F.2d 1126, 1134 (2d Cir. 1979) (finding significant competitive distance and no likelihood of confusion between DRIZZLER for golf jackets and DRIZZLE for coats). Accordingly, because of the substantial differences between Applicant's and Registrant's goods, confusion

between the two marks is not likely to occur. Further, no support is cited for the Examining Attorney's assertion that the goods are related in that they flow in the same channels of trade and are directed to the same class of purchasers.

As further evidence of the lack of confusion between Applicant's mark and the cited registration, Applicant points to U.S. Registration No. 1,269,298 for SULTANINO for footwear. The Trademark Office allowed the cited registration for SULTAN for athletic footwear in light of the existence of SULTANINO for footwear. The concurrent registration of, and lack of likelihood of confusion between SULTAN and SULTANINO, both for footwear, suggests that a SULTAN-formative mark used on footwear should not be entitled to protection beyond closely related products. Snowboards are not closely related to athletic footwear, i.e., sneakers. Thus, in the present case, the difference between Applicant's mark for snowboards and the cited registration for athletic footwear is significant and confusion is not likely.

In view of the foregoing remarks, Applicant submits that this application is in condition for prompt publication and favorable action is requested.

If any fee is deemed necessary in connection with this response, please charge to deposit account No. 03-3125.

Docket No. 65760

If the Examining Attorney has any further questions, it is suggested that the Examining Attorney telephone Applicant's attorney.

Respectfully submitted,
COOPER & DUNHAM, LLP

Dated: June 27 2002

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I hereby certify that this paper is being deposited this date with the U.S. Postal Service as first class mail addressed to: Assistant Commissioner for Trademarks, Arlington, Virginia 22202-3515

Peter D. Murray 6-27-02
Peter D. Murray Date